IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.896 of 2014

(Against the judgment of conviction, dated 22.07.2014, and order of sentence, dated 4.08.2014, passed by Shri Vinod Kumar, Ist Additional Sessions Judge, Bhagalpur in S.T. No. 1242 of 2011, T.R. No. 198 of 2013, arising out of Kahalgaon P.S. Case No. 184 of 2011)

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Fuchilal Manjhi son of Doman Manjhi, resident of village-Choubeydih, P.S.- Barahat, District-Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :
For the Appellant : Mr. Depak Kumar, Adv.
For the Respondent/s : .

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT
(Per: HONOURABLE THE ANIL KUMAR UPADHYA)
Date: 16-09-2017

This jail appeal has been preferred on behalf of the appellant.

2. Mr. Dipak Kumar was appointed as a lawyer to conduct the instant case on behalf of the appellant by the High Court Legal Services Committee.

3. The instant appeal is against the judgment of conviction dated 22.7.2014 and order of sentence dated 4.8.2014 whereby the conviction under section 376 and 302 of the Indian Penal

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Code. The appellant was sentenced to undergo rigorous imprisonment for life for the offence under section 302 IPC and rigorous imprisonment for a period of ten years and a fine of Rs. 10,000/- for the offence under section 376 of the Indian Penal Code and in the default of payment of fine to undergo six months simple imprisonment.

4. The prosecution case in brief, is that the informant Shankar Manjhi on 22.5.2011 at about 7.30 a.m. gave his fard-beyan to S.I. Kamleshwar Pd. Singh, SHO Kahalgaon P.S. near the dead body of his daughter Anokhi Kumari aged about 10 years lying near Sah-Bandh Salempur Bahiyar and stated therein that his daughter Najul Kumari was married with Manilal Mushar on 15.5.2011 and on 16.5.2011 Vidagiri of Nazul was held and alongwith her another daughter of the informant, named Anokhi Kumari aged about 10 years also went in her Sasural and from that day Anokhi Kumari was living in the Sasural of her sister. On 21.5.2011 in the night the married daughter of the informant namely Nazul Kumari phoned to him and informed that at 7.00 p.m. in the evening Anokhi Kumari was taken away by Fuchilal Manjhi, who is son-in-law of Bhola Mushar for giving biscuits but Anokhi Kumari did not return home upto 9.00 p.m. and they are searching Anokhi Kumari everywhere for taking meal. The informant after receiving this information alongwith Sindhu Mushar, Umesh Mushar, Lukhra Manjhi, Sohit Manjhi and his son

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Ranjan Manjhi went from their village to R.C.-1 Indira Awash Colony at the Sasural of her daughter Najul where the informant came to know that Anokhi Kumari was taken away by Fuchilal Manjhi, who is the son-in-law of Bhola Manjhi for eating her biscuits but she did not return home and they thereafter began searching everywhere but she could not be traced out. They also searched Fuchilal Manjhi but he also could not be located. The informant stayed at that village and in the morning they caught Fuchilal Manjhi and enquired from him about Anokhi Kumari then he by weeping told that by seeing Anokhi Kumari he became sexual and on the previous night he took her at Sah-bandh and after eating her biscuits he committed rape with her and during rape she could not tolerate it and tried to cry then he pushed her mouth and neck due to which she became senseless and she died. Thereafter, Fuchilal Manjhi brought them at the P.O. and showed the dead body. Thus, the accused Fuchilal Manjhi on the pretext of giving biscuits took away Anokhi Kumari at Sah-bandh and committed rape with her and thereafter killed her. The informant gave his fard-beyan and thereafter the officer-in-charge, Kahalgaon P.S. registered a case and drew-up formal FIR.

5. The police after investigation submitted charge-sheet against the appellant under sections 376 and 302 of the Indian Penal Code and the case was committed to the court of sessions. The appellant pleaded not guilty and as such Sessions Trial (No. 1242 of

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2011) commenced.

6. In the trial, eight witnesses were examined in support of the prosecution case and eight exhibits were marked in the case. The trial court on scrutiny of the witnesses, documentary evidence and exhibits including the confessional statement of the appellant herein held out that prosecution has been able to prove the charges beyond reasonable doubts and accordingly convicted the appellant for the offence under sections 376 and 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life for the offence punishable under section 302 of the Indian Penal Code and ten years rigorous imprisonment and a fine of Rs. 10,000/- for the offence under section 376 of the Indian Penal Code. However, both the sentences are directed to be run concurrently.

7. In this appeal, the appellant has submitted that trial court committed several errors while holding the appellant guilty. He submitted that the blood stain on earth where the dead body was recovered was not sent for FSL examination. The finger print of the assailant was not collected and sent for Forensic Science Laboratory for examination. He submitted that the trial court further committed error in relying upon the confessional statement of the appellant as the confessional before the police is inadmissible. He has also referred to infirmity in the matter of non-confrontation of the entire

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circumstances to the accused under section 313 Cr.P.C. In addition thereto, he has made submission that if the appellant was the real offender then he should have absconded from the village and also submitted that in the totality facts situation the prosecution case is full of contradiction and conviction of appellant is unsustainable on facts as well as in evidence.

8. In the trial the P.W. 1 has stated that on the date of occurrence at about 7 p.m. the appellant came to his residence and took away Anokhi Kumari, his sister-in-law (Sali) on the pretext of eating biscuits.

9. P.W.-2 is the witnesses in the fard-beyan in his examination in chief has submitted that the appellant took Anokhi Kumari for eating biscuits but when Anokhi Kumari did not return back then he informed the father of the Anokhi Kumari and father of the Anokhi Kumari came in the night and in the next morning the appellant was interrogated he disclosed that he took Anokhi Kumari with him for eating biscuits from the house of P.W.3. The appellant on interrogation admitted his guilt of committing rape of Anoki Kumari and causing death of Anokhi Kumari. The dead body of the Anokhi Kumari was recovered outside the village at Sah-bandh and thereafter police came there and prepared inquest report and fard-beyan of Shankar Manjhi was recorded.

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10. P.W.-4 in his deposition has stated that Anokhi Kumari, elder sister of the victim told his brother Shankar Manjhi and informed about the fact of missing of Anokhi Kumari and thereafter P.W.-4 aloghwith his brother and others came to the house of Wakil Manjhi (Samdhi) of the informant and he narrated the same story about confession by the appellant about commission of rape and killing of Anokhi Kumari and recovery of dead body of Anokhi Kumari from Sah-bandh.

11. P.W.-5 doctor who has conducted post-mortem on the dead body of Anokhi Kumari has found ante-mortem injury on the dead body of the Anokhi Kumari. The finding of the doctor is forceful sexual intercourse with the victim and manual strangulation causing death of the victim.

12. P.W.6 elder sister of the victim with whom the victim accompanied to her Sasural narrated story of taking her sister Anokhi Kumar by the appellant for eating biscuits and thereafter the episode of not returning back of Anokhi Kumar and subsequently information on phone to her father about missing of Anokhi Kumari was given and her statement is on the same line like other witnesses about recovery of dead body of Anokhi Kumari at the instance of the appellant. In her cross-examination she has stated that the house of the appellant is situated just after one house and in her presence the

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appellant took away Anokhi Kumari for eating biscuits.

13. P.W.-7 who is informant of the case has narrated the entire episode that after receiving the information on phone from his daughter Nazul about Fuchilal Manjhi (appellant) taking Anokhi Kumari on the pretext of eating biscuits, he has stated about the disclosure of rape committed by the appellant and on the basis of his confessional statement dead body was recovered from the Sah-bandh.

14. P.W.8 is the I.O. of the case who after investigation submitted charge-sheet in the case. He stated that he recorded confessional statement of the witnesses and stated that the appellant was arrested from Sah-bandh when the appellant came with villagers to locate the place of occurrence where the dead body is lying.

15. In the conspectus of facts and circumstances discussed above, we find that the witnesses are consistent on the point that appellant took Anokhi Kumari on the pretext of eating biscuits. We also found consistent stand of the witnesses that the appellant described the manner of rape and killing of Anokhi Kumari and the dead body was recovered from Sah-bandh only on identification and disclosure of the appellant. The unambiguous medical report of the doctor about forceful sexual intercourse committed with the victim in the instant case is clinching. We have given our anxious consideration to the submission of the appellant as to the admissibility of the

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confessional statement to the police is only admissible to the extent of recovery under section 27 of the Indian Evidence Act.

16. In the instant case, the confessional statement discloses that Anokhi Kumari was (a) subjected to forceful intercourse. (b) She was killed in the process of committing rape. (c) The dead body of the Anokhi Kumari is lying at the Sah-bandh, all the aforesaid three are disclosures by the appellant. The dead body of deceased was recovered from the Sah-bandh, the disclosure in the confessional statement about rape was corroborated by the medical evidence that Anokhi Kumari was forcefully raped and she was killed in the process of committing rape.

17. In such situation, when there is no ambiguity in the evidence of the witnesses that the appellant took Anokhi Kumari (deceased) for eating biscuits and the fact that she was forcefully raped and killed and the dead body was recovered on the confessional statement of the appellant and the manner in which the victim was raped and killed was also corroborated by the medical evidence leaves no room of doubt about the involvement of the appellant in the commission of crime. We are of the considered view that if the confessional statement leads to recovery of disclosure within the specific knowledge of the accused and during the course of scientific examination those disclosures are found to be substantiated then the

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confessional statement leading recovery and disclosure of specific fact within the first hand knowledge of the accused is also relevant and admissible.

18. In the totality facts situation discussed above, we are of the considered view that motive behind the occurrence is also established against the appellant as the appellant in his confessional statement has stated that seeing the deceased he became sexual and thereafter on the pretext of eating biscuits he took the deceased at Sah-bandh and committed rape forcefully and in the process of committing rape the deceased was killed.

19. In the aforesaid facts and circumstances, we find no error in the judgment of the trial court and as such the appeal is dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Ravi/-

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